

REMARKS

Claims 1-39 are pending in this application. Claim 1 is the sole independent claim. By this Amendment, claims 2-39 are amended. No new matter is added.

Claim Objections

Claim 33 is objected to because of informalities. Specifically, claim 33 is objected to for the use of parentheses within the body of the claim. However, as the use of parentheses are a well accepted convention when providing the definition of an acronym, withdrawal of the objection is respectfully requested. Further, the Office Action fails to provide any basis in the rules or statutes for the objection to the use of a parenthetical expression and, as such, has failed to provide grounds for objecting to the claim. Therefore, Applicants respectfully request that the objections to claim 1 be withdrawn.

Rejections under 35 U.S.C. §112

Claims 14-16, 18-23, 25, 28, 34 and 35 stand rejected under 35 USC §112, first paragraph, as failing to comply with the written description requirement. This rejection is respectfully traversed.

Although it is alleged in the Office Action that the elements recited in claims 14-16, 18-23, 25, 28, 34 and 35 lack *antecedent* basis in the specification, the Office Action fails to indicate which features recited in those claims are not supported in the specification. Further, as the claims are amended to clarify the claimed subject matter as described in the specification, Applicants submit that the claimed subject matter is adequately supported in the specification and therefore complies with 35 U.S.C. §112, first paragraph.

Therefore, Applicants respectfully request that the rejections of claims 14-16, 18-23, 25, 28, 34 and 35 under 35 U.S.C. §112 be withdrawn.

Claims 2-39 stand rejected under 35 USC §112, second paragraph, as being indefinite. This rejection is respectfully traversed.

The rejected claims are amended in a manner believed to be fully responsive to the rejection by providing *antecedent* basis for the claimed features specified in the rejection.

Therefore, Applicants respectfully request that the rejections of claims 2-39 under 35 U.S.C. §112 be withdrawn.

Rejections under 35 U.S.C. §102 – Rzadki et al.

Claims 1-4, 7-9, 25 and 26 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 7,172,474 (“Rzadki et al.”). This rejection is respectfully traversed.

In rejecting claims 1-4, 7-9, 25 and 26 under 35 U.S.C. §102(e), it is alleged that the international filing date of the applied reference is before November 29, 2000, and therefore the priority date of the reference is determined under 35 U.S.C. §102(e) prior to the amendment of §102(e) by the *American Inventor’s Protection Act* (AIPA). However, the applied reference was filed as a PCT application on June 27, 2003, and includes a foreign application priority date of July 10, 2002. Therefore, the applied reference does not have a filing date prior to November 29, 2000, and the priority date is, therefore, determined under 35 U.S.C. §102(e) as provided by the amendment to §102(e) in the *American Inventor’s Protection Act*.

Applicants submit that a *prima facie* case of anticipation has not been established as the applied reference of Rzadki is not available as prior art under 35 U.S.C. §102(e). According to 35 U.S.C. §102(e), an international filing date, which is on or after November 29, 2000, is a

United States filing date if the international application designated the United States and was published by the World Intellectual Property Organization (WIPO) under the Patent Cooperation Treaty (PCT) Article 21 (2) in the English language. As the applied reference was an international application filed and published in German under the PCT, the §102(e) date is the date the national stage of the PCT application was published in the English language (February 17, 2005).

As the §102(e) date of February 17, 2005, is subsequent to the priority date of the present application of November 19, 2003, the reference does not qualify as prior art. A verified English language translation of the priority document is submitted herewith to perfect the claim for priority.

As the applied reference fails to qualify as prior art, a *prima facie* case of anticipation has not been established and, therefore, Applicants respectfully request that this rejection of claims 1-4, 7-9, 25 and 26 under 35 U.S.C. §102 be withdrawn.

Non-Substantive Rejections

Applicants note that claims 5, 6, 10-24 and 27-39 are only rejected under 35 U.S.C. §112. Accordingly, Applicants understand that upon removal of the rejections of those claims under 35 U.S.C. §112, that the claims will be in condition for allowance as those claims have not been rejected over prior art.

CONCLUSION

In view of the above remarks and amendments, Applicants respectfully submit that each of the rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John W. Fitzpatrick at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17; particularly, extension of time fees.

Respectfully submitted,
HARNESS, DICKEY, & PIERCE, P.L.C.

By



John W. Fitzpatrick, Reg. No. 41,018

P.O. Box 8910
Reston, Virginia 20195
(703) 668-8000

DJD/JWF/mat